BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2012-203-E - ORDER NO. 2013-5

FEBRUARY 14, 2013

IN RE: Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina	)))))	ORDER DENYING PETITIONS

This matter comes before the Public Service Commission of South Carolina ("Commission") on two Petitions for Rehearing and/or Reconsideration of Order No. 2012-884, filed respectively in this docket by the Sierra Club and the South Carolina Energy Users Committee ("SCEUC").

On November 26, 2012, the Sierra Club filed a Petition for Rehearing or Reconsideration with the Commission in this docket. On November 28, 2012, SCEUC similarly filed with the Commission a Petition for Reconsideration. In each of these petitions (the "Petitions"), the petitioners (the "Petitioners") request that the Commission rehear or reconsider certain findings and conclusions as set forth in the Order approving SCE&G's request for updates and revisions to its capital cost and construction schedules, Order No. 2012-884, dated November 15, 2012 (the "Order"). The Petitions are without merit and are hereby denied.

I. Standards for Considering Petitions for Reconsideration and Rehearing

The purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders

pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal. Pursuant to S.C. Code Ann. § 58-27-2310, "[n]o right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission . . . unless a petition to the commission for a rehearing is filed and refused . . . ." Additionally, a party cannot raise issues in a motion to reconsider that were not raised during the proceeding. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).*

Under the operative Commission regulation, which is 10 S.C. Code Ann. Regs. § 103-825(4):

> *A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:*
>
> *(a) The factual and legal issues forming the basis for the petition;*
>
> *(b) The alleged error or errors in the Commission order;*
>
> *(c) The statutory provision or other authority upon which the petition is based.*

Conclusory statements that amount to general and non-specific allegations of error do not satisfy the requirements of the rule. *See In re South Carolina Pipeline Company, Docket No. 2003-6-G, Order No. 2003-641, at 6* ("[A] conclusory statement based upon speculation and conjecture is no evidence at all and is legally insufficient to support a [petition for reconsideration]"). While the requirements of specificity in post-trial motions are interpreted with flexibility, at minimum the decision-making body "must

be able to both comprehend the motion and deal with it fairly." *See Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010).*

Order No. 2012-884 is a comprehensive order setting forth sufficient findings and conclusions regarding the matters raised in this proceeding and the arguments of the Intervenors. That Order addressed all issues that were properly before the Commission in this docket.

II. The Errors Alleged in the Petition for Rehearing or Reconsideration

As an initial matter, the Sierra Club's Petition consists solely of a list of errors alleged to have been committed by the Commission in Order No. 2012-884. The allegations of error are generally conclusory in nature and, in most cases, unsupported by any legal analysis and as such are insufficient to support a petition for rehearing. Notwithstanding the foregoing, the Commission will address the general principles contained in the Sierra Club's petition herein. Further, the Commission will address each individual allegation of error by the Sierra Club and point out where each allegation has already been discussed and explained in Order No. 2012-884, and certain other pertinent orders, save the last general conclusory allegation. (See Appendix A to this Order, which is hereby deemed to be part of this Order as fully as if repeated herein verbatim.) The general discussion below and in Appendix A will also address the specific errors alleged by SCEUC.

In substance, the two Petitions allege two principal errors: First, the Petitions allege that SCE&G was required to have anticipated the cost adjustments that are at issue in this proceeding more than four and one-half years ago when SCE&G made its initial

filing under the Base Load Review Act, S.C. Code Ann. §§ 58-33-210, *et. seq.*, ("Base Load Review Act" or "BLRA"). Second, the Petitions allege that SCE&G was required to present in this docket a thorough evaluation of the prudence of the decision to continue to construct the new nuclear units ("Units"), and that the evidence presented here is not sufficient to meet that burden.

A. The Failure to Anticipate the Current Cost Adjustments in 2008

The Petitions allege that under the terms of the BLRA, SCE&G was required to anticipate the cost adjustments that are at issue in this proceeding when it made its initial BLRA filing in 2008. In Order No. 2012-884 at p. 67-68, the Commission responded to this allegation. For the reasons presented here, this allegation is without merit.

i. Structure and Proceedings Under the BLRA

The original BLRA review of the Units was held in 2008 in Docket No. 2008-196-E. In that docket, SCE&G presented its base cost forecasts for the Units and also provided detailed information about the risk factors it identified related to those forecasts. SCE&G further presented its best estimate of the amount of contingency funds that it anticipated to be sufficient to cover those risks.

In preparing its testimony in the 2008 hearing, the South Carolina Office of Regulatory Staff ("ORS") conducted a full review and audit of SCE&G's risk assessment and cost estimates. ORS did so using its own internal experts as well as independent experts with extensive experience in nuclear plant construction and major electric generation projects internationally. ORS's testimony in that proceeding supported the reasonableness and prudency of the estimates and risk analysis presented by SCE&G.

After a vigorously contested hearing, the Commission determined that the cost estimates presented by SCE&G and supported by ORS were reasonable and prudent. The Commission approved those estimates in Order No. 2009-104(A). There was no suggestion in Docket No. 2008-196-E that the cost estimates presented there were anything but fair, complete, and thorough cost estimates based on the best information available to the utility at the time. Likewise, there is no credible evidence in this docket indicating otherwise.

Order No. 2009-104(A) was then appealed to the South Carolina Supreme Court on the theory that only costs that could be known with reasonable certainty and precision and that could be quantified to specific budgetary items could be included in approved BLRA estimates. The Court agreed and removed from the approved estimates for this project the contingency costs that SCE&G anticipated as likely to be incurred, but which were difficult to identify with certainty at that time.

In deciding to remove these contingency costs, the Court acknowledged that additional costs would likely be identified during the course of this and other similar projects. The Court found that such costs could properly be included in the approved estimates after the costs had been identified with specificity and were subject to Commission review provided for under S.C. Code Ann. § 58-33-270(E). *See South Carolina Energy Users Comm. v. South Carolina Pub. Serv. Comm'n, 388 S.C. 486, 496, 697 S.E.2d 587, 592 (2010).* Therefore, the Court has adopted an interpretation of the BLRA that limits the costs that can be included in the BLRA cost forecasts to those costs that can be identified with reasonable certainty and specificity at the time an application

is filed. But the Court has balanced this ruling by affirming the flexibility that the BLRA allows the utility for updating cost forecasts later in the project as risks become better known and as costs become better quantified. Such a balance is required for the BLRA to function in a reasonable and effective way.

Petitioners, on the other hand, would have the Commission rule that utilities are imprudent for not including in their BLRA forecasts costs that were uncertain, hypothetical and unquantifiable at the time those forecasts were made. This position is inconsistent with the judicial interpretation of the BLRA that is reflected in *South Carolina Energy Users Comm. v. South Carolina Pub. Serv. Comm'n, supra.*

Under Petitioners' approach, the Commission is invited to rule, among other things, that SCE&G should have included in its 2008 cost forecasts the following:

i. the effects on contractors' labor costs of the 2010 federal Health Care and Education Reconciliation Act (Change Order 12),

ii. the impact on nuclear staffing and emergency planning requirements of the 2011 Fukushima event (Emergency Planning/Health Physics),

iii. the impact on equipment and software costs of the recent emergence of cyber-security threats to the electric system (Change Order 14),

iv. the possibility that, in the period 2008-2012, the Nuclear Regulatory Commission (NRC) and the

industry might increase standards for the licensing and training of nuclear operators and craft workers (Operator/Training Margin, Timing Variance to Support Craft),

v. the possibility that the economic recession that began in late 2008 would result in other utilities not proceeding with new units and so not sharing common engineering costs for AP1000 projects (APOG/Plant Programs/Procedures),

vi. the costs and time required for complying with NRC aircraft impact standards for nuclear reactors that were not issued until 2009 (Change Order 16),

vii. the fact that, in 2011-2012, Westinghouse Electric Company, LLC and the Shaw Group decided that stronger steel was required for certain modules used in the Units (Change Order 16), and

viii. the fact that, after excavation conducted during 2009-2011, rock conditions at the site might be found to be different from what pre-excavation drilling showed (Change Order 16).

The Petitioners' approach would require the Commission to engage in a level of speculation that is incompatible with the purposes and intent of the BLRA. Furthermore,

given the speculative nature of the analysis that would be required, Petitioners' interpretation of the BLRA would make the statute very difficult for this Commission to apply in practice.

Further, the Petitioners' interpretation of the BLRA which necessitates giving effect to one section of the law wherein the capital costs are first determined, while ignoring another section of the law for revisions to the capital costs, violates the rule of statutory construction set out by the Court of Appeals. That Court has held that, in construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable statutory construction. *Tillotson v. Keith Smith Builders, 357 S.C. 554, 593 S.E. 2d 621 (Ct. App. 2004); Corbett v. The City of Myrtle Beach, 336 S.C. 601, 521 S.E. 2d 276 (Ct. App. 1999).* In this case, the Petitioners give credence to the establishment portion of the Base Load Review Act (Section 58-33-275) while ignoring the revision provision (§ 58-33-270 (E)) and the Supreme Court's holdings in SCEUC's own appeal regarding the availability of requests for revisions to the approved capital costs. *See South Carolina Energy Users Committee v. South Carolina Public Service Commission, supra.*

The completeness and prudency of the utility's original BLRA cost forecasts were fully addressed in Order No. 2009-104(A). But putting that order aside, the preponderance of evidence in this docket establishes that each of the cost adjustments presented here were not known or reasonably knowable when prior BLRA petitions were before this Commission. In this docket, SCE&G has presented a detailed accounting of

the changes that make up its request for a $283 million adjustment in cost schedules and specific testimony about how the requirements that led to this adjustment have arisen. This evidence shows that the requested cost adjustments arise out of changes in laws, changes in regulations, subsequent regulatory decisions, changes or evolutions in designs, emerging information and analysis as to operations, staffing and facilities, changed conditions or other matters that have arisen or become known since the prior proceedings. This evidence establishes that the adjustments at issue in this proceeding were not known or knowable with certainty, clarity or specificity when prior BLRA proceedings were heard. As such, under the reasoning of the Court in *South Carolina Energy Users Comm. v. South Carolina Pub. Serv. Comm'n*, *supra*, these costs could not properly be included in the BLRA forecasts that were approved in prior orders, and the Company was not imprudent for not including them in prior forecasts.

ii. Standard of Review Under S.C. Code Ann. § 58-33-270(E)

In its review of the evidence presented in this proceeding, the Commission has relied on the standards set out in S.C. Code Ann. § 58-33-270(E). This is the provision of the BLRA that permits utilities to seek modifications of cost forecasts that the Commission has previously approved under the BLRA.

S.C. Code Ann. § 58-33-270(E) reads as follows:

The commission shall grant the relief requested [i.e., a modification of forecasted cost schedules] if, after hearing, the commission finds . . . that the changes [to those schedules] are not the result of imprudence on the part of the utility.
S.C. Code Ann. § 58-33-270(E)(1).

Petitioners assert that S.C. Code Ann. § 58-33-275(E) contains a different and higher standard than that contained in S.C. Code Ann. § 58-33-270(E). Petitioners assert that it was an error for the Commission to rely on S.C. Code Ann. § 58-33-270(E) and not on S.C. Code Ann. § 58-33-275(E) in deciding this matter. The statutory provision on which the Petitioners rely is found in a different section of the BLRA. The principal focus of that section is to establish the final and binding nature of a BLRA order in the context of requests for revised rates or other rate relief. See S.C. Code Ann. § 58-33-275(A), (B), (C); S.C. Code Ann. § 58-33-280(A), (B), (J)(1); S.C. Code Ann. § 58-27-860. This provision instructs the Commission on how to proceed in cases where a party demonstrates that a deviation from approved cost forecasts was caused by utility imprudence. In such cases, S.C. Code Ann. § 58-33-275(E) provides that the Commission "***may*** disallow the additional capital costs that result from the deviation but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect." S.C. Code Ann. § 58-33-275(E) (emphasis supplied). Thus, where additional costs due to imprudence are shown, S.C. Code Ann. § 58-33-275(E) provides the Commission with discretion to isolate and remove the imprudent costs presented in a revised rates proceeding or general rate proceeding without otherwise jeopardizing the binding nature of the BLRA Order as to other costs.

Contrary to Petitioners' suggestion however, S.C. Code Ann. § 58-33-275(E) does not impose a new, higher, or different standard for judging prudency than that contained

in S.C. Code Ann. § 58-33-270(E). S.C. Code Ann. § 58-33-275(E) embodies the established rule that prudency is not to be judged by hindsight but must be judged based on the information available to the utility at the time that meaningful decisions can be made to avoid or minimize costs. Contrary to Petitioners' assertions, S.C. Code Ann. § 58-33-270(E) does not create a special duty to identify costs in initial BLRA proceedings that is different from the duty that exists under the standard prudency rule. As indicated above, in Order No. 2009-104(A), the Commission found after a hearing that the cost projections presented in Docket No. 2008-196-E were reasonable and prudent considering the information available to SCE&G at that time. Nothing in S.C. Code Ann. § 58-33-275 indicates that S.C. Code Ann. § 58-33-275(E) is intended to create a different standard of review to override the prudency standard contained in S.C. Code Ann. § 58-33-270(E).

The Commission has reviewed S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-33-275(E) in light of the structure of the BLRA and the policies underlying it. The Commission finds that, in Order No. 2012-884, it appropriately applied the standards contained in S.C. Code Ann. § 58-33-270(E) to its evaluation of the evidence in this proceeding.

B. The Prudency of Continuing the Nuclear Project

The Petitions further allege that, in this docket, SCE&G was legally required to present a reassessment of the prudency of continuing to build the two Units as a prerequisite to modifying the approved cost schedules, including a consideration of whether building one nuclear unit instead of two units would have been prudent. In its

evidence in the proceeding, SCE&G presented two analyses prepared by Dr. Joseph Lynch supporting the economic justification of continuing to build the Units as opposed to abandoning them in favor of what was stated as the next-best alternative, which was natural gas fired combined-cycle capacity. The Petitions allege that these two analyses were not sufficient.[1]

As stated in Order No. 2012-884, the Commission does not believe that SCE&G was required to present the prudency analysis that the Sierra Club alleges was necessary. As stated in Order No. 2012-884, such an analysis was not required because of (a) the binding nature of the initial BLRA decision under S.C. Code Ann. § 58-33-275(A), and (b) the terms of S.C. Code Ann. § 58-33-275(D) which preclude consideration of changes in fuel prices in reassessing the binding nature of BLRA orders. As to the later point, the recent decline in natural gas prices was the basis for the Sierra Club's claim that a reassessment of the prudence of continuing to build the Units was required. This puts that claim squarely at odds with S.C. Code Ann. § 58-33-275(D), which states that changes in fuel costs will not be considered in conducting any evaluation under the Base Load Review Act.

However, the issue of whether or not an analysis was required is moot because SCE&G prepared the analysis that the Sierra Club requested and presented it in two forms in its rebuttal and supplemental rebuttal testimony. The Petitioners have had the opportunity to review the analyses, examine SCE&G's witnesses concerning them, and

[1] This issue was not raised by SCEUC either at hearing or in its post hearing brief in the form of a proposed Order Denying Petition for Updates and Revisions to Schedules, dated October 26, 2012, and is therefore, deemed to be waived by SCEUC. See p. 16 *infra* for relevant case law.

file surrebuttal testimony and supplemental surrebuttal testimony concerning them. In this context, it would be meaningless to grant rehearing on the question of whether such an analysis was required. The relief requested has already been obtained. The Commission has reviewed the analyses that Dr. Lynch presented with the same care and attention that would have been given if there was an express statutory requirement for SCE&G to present such information. The Commission has determined that Dr. Lynch's analyses amply support the decision to continue constructing the Units. Weighing Dr. Lynch's analyses and testimony against the contrary evidence provided by the Sierra Club's witness Dr. Cooper, the Commission finds Dr. Lynch's analyses and testimony to be credible and convincing. The preponderance of the evidence fully supports the prudence of continuing to build the Units.

The Sierra Club also questions the methodological sufficiency of Dr. Lynch's second analysis. As a factual matter, the Commission finds that both analyses he presented were methodologically sound and sufficient to demonstrate the prudency of continuing to construct the Units. In modeling gas scenarios in his second analysis, Dr. Lynch assumed two combined-cycle natural gas plants would come on line at the same time, as the Units were scheduled to do so in the nuclear scenarios, *i.e.,* in 2017 and 2018. He assumed that these combined-cycle gas units would provide the same generating capacity as the nuclear Units. As a factual matter, the Commission does not find credible the Sierra Club's claims that the analysis would lead to different conclusions if the timing of the construction of the natural gas plants were adjusted. With the addition of either the new natural gas capacity or the nuclear capacity, SCE&G's reserve margin does not

exceed the established range during the planning period. This means that, under either scenario, new generation is needed in the years and amounts specified. Therefore, there is no factual basis to assume that, if a natural gas resource strategy is assumed, the addition of natural gas capacity can be delayed.

The Commission further accepts Dr. Lynch's testimony that it is not possible to create efficiencies in the natural gas resource plan by down-sizing the potential gas units. As Dr. Lynch testified, the blocks of natural gas fired generation Dr. Lynch assumed in his analysis were as small as feasible for combined-cycle natural gas units. [Tr. at 925-926]. Accordingly, whether gas or nuclear capacity is added, the blocks of capacity added and the timing of capacity added will be the same. There is no factual basis to assume that switching to a natural gas resource strategy would allow SCE&G to delay constructing needed generation resources or to construct them in smaller increments.

The Commission also does not find credible the Sierra Club's claim that running additional scenarios to assess the impact of energy conservation or alternative energy sources might lead to different results. As the record amply demonstrates, the generation that SCE&G's system needs is dispatchable base load or intermediate generation. The evidence shows that energy efficiency resources and other alternative energy resources, such as wind and solar, are important and potentially beneficial supplements to base load or intermediate generation, but they are not substitutes for it. The cost limitations and availability limitations of these alternative resources and their insufficiency to replace dispatchable base load and intermediate generation units are amply discussed in the evidence presented in this docket as well as in Docket 2008-196-E.

More importantly, the Commission finds that the decision to proceed with the construction of the Units does not and should not depend solely on the current price forecasts for natural gas supplies. This is a factual finding based on the evidence presented in this docket by Mr. Marsh, Mr. Byrne and Dr. Lynch as to the uncertainties of such forecasts and their changing nature. A similar result is reached based on S.C. Code Ann. § 58-33-275(D). But the Commission reaches the same result on a purely factual basis whether or not that statute is considered.

As to this later point, SCE&G's customers will benefit if SCE&G can construct a generating system that reflects a balanced portfolio of plants, with a balanced mix of fuel sources and environmental risks. The Commission finds that, as a factual matter, adding nuclear generation accomplishes that goal.

The Sierra Club argues that Dr. Lynch's analyses might have reached a different result had he considered alternative prices for nuclear construction. The Commission finds that this argument is without merit. The preponderance of the evidence shows that, even with today's exceptionally low natural gas prices, completing nuclear generation is the most economical choice for SCE&G. The evidence on the record shows that it would require changes in the comparative costs of nuclear and gas generation that are well beyond anything suggested in the record here for that advantage to be reversed. But even if it could be shown that natural gas generation had some cost advantage over nuclear generation due to current gas prices, the risks that those prices would change as well as the risks inherent in SCE&G continuing and deepening its reliance on fossil fuels would have to be carefully considered before any change in the construction plan would be

warranted. The preponderance of the evidence shows that the price risks and environmental risks of expanded reliance on fossil fuel generation resources are material and substantial.

C. Miscellaneous Allegations

In its Petition, at pp. 11-12, SCEUC seeks to raise issues related to the expiration of 250 megawatt capacity sales contract between SCE&G and a North Carolina wholesale supplier. Issues related to this contract were raised and fully addressed in Docket 2012-218-E. As indicated in that docket, the expiration of the contract has been reflected in SCE&G's projections of future capacity needs under its Integrated Resource Plan ("IRP") which is the data Dr. Lynch used in performing his analyses. Accordingly, the expiration of this contract is already accounted for in Dr. Lynch's analyses In the context of the present docket, until the filing of the SCEUC's Petition, neither SCEUC nor any other party sought to present evidence or argument concerning the expiration of this contract in this proceeding. This matter was not raised prior to the filing of these Petitions, and it is not properly before the Commission at this time. This argument is waived. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n, supra; Hickman v. Hickman, supra; Patterson v. Reid, supra,* (holding that a party cannot raise issues in a motion to reconsider that were not raised during the proceeding).

The Petitioners alleged that SCE&G was imprudent in filing the original BLRA proceeding before the final round of amendments to the AP1000 design control documents ("DCD") were reviewed and approved. This issue was extensively litigated in Docket No. 2008-196-E. As indicated in that docket, the NRC had granted final approval

for the design of the AP1000 reactor well before 2008. That approval included the DCD revisions up to and including DCD Revision 15. In 2008, additional amendments to the DCD were expected to improve the reactor's resistance to aircraft impacts but cost, timing, and other effects of those revisions could not be known until the NRC issued its final aircraft impact rule and design work to meet those requirements was completed.

In its testimony at the 2008 hearing, the Company provided evidence that it was neither feasible nor economical to wait for those additional DCD revisions to be finalized before proceeding with its BLRA application. Failure to proceed at that time would have involved the loss of favorable pricing terms and other terms in the Engineering, Procurement, and Construction (EPC) Contract, the loss of special federal production tax credits for new nuclear construction, the inability to proceed with the plan for financing construction of the Units, and the necessity from a timing standpoint to abandon the nuclear construction plan and meet the Company's base load generation needs with combined-cycle units. At the time of the initial BLRA proceeding, combined-cycle gas units were the only alternative base load or intermediate load resource that could be constructed rapidly enough to meet system needs.

The Company's testimony concerning the need to file the BLRA petition in 2008 was credible. In this proceeding, it is not appropriate for the Commission to reopen its earlier approval of that decision. Furthermore, no credible evidence has been presented in this docket to indicate, in light of the factors listed above, that it was imprudent to proceed with the initial BLRA filing at the time that the Company did.

SCEUC raises two further issues with our original Order in this case. SCE&G

used the macro-corridor approach in quantifying the environmental impacts of the transmission aspects of this project. SCEUC asserts that this contributed to the delay in issuing the Combined Operating License (COL) for the Units. SCEUC further asserts that SCE&G's eventual decision to minimize environmental impacts by using existing rights of way for constructing the lines in question is the cause of some part of the increase in transmission costs at issue in this proceeding. These two points constitute conclusory assertions made by SCEUC without evidentiary support. Neither of these points is supported by the evidence of record in this proceeding. The SCEUC has not pointed to any evidence of record supporting these assertions in its Petition. The Commission finds them to be without merit.

III. CONCLUSION

For the foregoing reasons, and the reasons discussed in the Appendix below, this Commission denies the relief sought by the Sierra Club and the South Carolina Energy Users Committee in their Petitions and such Petitions are denied in their entirety. (See Appendix A below for a discussion of the specific allegations of error propounded by the Sierra Club and the location of already published findings regarding the majority of those allegations.)

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

David A. Wright, Chairman

ATTEST:

Randy Mitchell, Vice Chairman
(SEAL)

Appendix A

Specific Allegations of Error of the Sierra Club and Locations of Already Published Findings on Those Allegations in Order No. 2012-884 and other Orders

1. **The Commission erred in overlooking and misapprehending the nature and scope of the authority granted it by statute to modify its initial Base Load Review Order, Order No. 2009-104 (A), applicable to this project.**

This allegation is conclusory and fails to state how the Commission overlooked and misapprehended the nature and scope of its authority. However, the nature and scope of the Commission's authority in this case is properly described at Order 2012-884, page 13.

2. **The Commission erred in failing to properly apply the provisions of SC Code Ann. § 58-33-275 to SCE&G's Petition to include additional capital costs estimates in its Base Load Review Order.**

This allegation is conclusory, since it fails to state how the Commission failed to properly apply the law to SCE&G's Petition. The Commission discusses the concept, however, throughout the Order.

3. **The Commission erred in failing to conclude here, where it is proven by a preponderance of evidence that there has been a material and adverse deviation from the approved schedules, estimates and projections set forth in the Base Load Review Order, and that it must disallow the additional capital costs that result from the deviation to the extent that the failure by the Utility to anticipate or avoid the deviation or to minimize the resulting expense was imprudent. S.C. Code Ann. § 58-33-275(E).**

This allegation goes to the Commission's basic interpretation of the Base Load Review Act, and where and when various sections of it are applicable. In this case, the Commission was presented with a list of new capital costs with an explanation that the costs occurred after the date of the original Base Load Order. Accordingly, this Commission held in Order No. 2012-884 that the revision portion of the Base Load Review Act, section 58-22-275(E) applied. See all of Order No. 2012-884, and, particularly, the explanation given on page 72 of that Order. Further, this principle is thoroughly discussed in the body of the present Order.

4. **The Commission erred in failing to conclude that SCE&G could, or should have anticipated or avoided the additional capital costs in question at the time of its initial Base Load Review Act (BLRA) application.**

This allegation of error concerns one of the major themes in the case. On pages 33-68 of Order No. 2012-884, the Commission discusses the additional proposed capital costs and why they should be accepted. See also the extensive discussion throughout the present Order.

5. **The Commission erred in failing to conclude that the evidence in the record compels a finding that in its rush to construct the nuclear plants, SCE&G sought and obtained its Base Load Review Order based on an incomplete unapproved design for the Westinghouse AP 1000 model nuclear plant, while failing to anticipate and include adequate safeguards to avoid excessive additional capital costs.**

This issue was discussed extensively on pp. 63-64 of Order No. 2009-104(A). The matter is also further elucidated on pp. 34-36 of Order No. 2012-884, and pp. 16-17 of the present Order.

6. **The Commission erred in finding and concluding that the additional capital costs associated with Change Order 16 are reasonable and prudent and comport with the terms of the BLRA; where such costs were anticipated, or should have been anticipated by SCE&G in its initial Base Load Review Act application, and are, therefore, imprudent under the BLRA. SCE&G assumed the risk of the additional costs associated with Change Order 16 which are not recoverable under the BLRA. §§ 58-33-250 (1), 58-33-275 (E).**[2]

This allegation is conclusory. This issue was discussed extensively on pp. 33-42 of Order No. 2012-884. There is also a general discussion in this Order at pp. 6-9 about the fact that these costs could not have been anticipated at the time of Order No. 2009-104(A). There is no evidence that SCE&G should have assumed the risk for the additional costs at that time.

7. **The Commission erred in finding and concluding that the additional $131.6 million in owner's costs requested in this docket are reasonable and prudent and comport with the terms of the BLRA; and in failing to find and conclude that SCE&G should have anticipated or avoided the additional $131.6 million in owner's costs it seeks recovery of in this Docket.** [3]

This allegation is conclusory. This issue was discussed extensively on pp. 42-58 of Order No. 2012-884. Further, there is also a general discussion in the present Order at pp. 6-9 about the fact that these costs could not have been anticipated or avoided earlier.

8. **The Commission erred in finding and concluding the additional capital costs associated with transmission costs requested in this docket are reasonable and prudent and comport with the terms of the BLRA. The additional transmission costs could and**

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[2] See also SCEUC Petition, p. 8, Paragraph 4 a. Although the SCEUC allegation is not conclusory, it is erroneous as per the discussion herein. Further, SCEUC appears to allege for the first time that SCE&G failed to demonstrate that the settlement agreement among it, Westinghouse, and Santee Cooper was prudent and reasonable. In any event, this allegation is without merit, as explained in Order No. 2012-884 at pp. 38-39.

[3] See also SCEUC Petition, p. 9, Paragraph 4 b. Although the SCEUC allegation is not conclusory, it is erroneous as per the discussion herein.

should have been anticipated or avoided at the time of the Company's initial BLRA Application. [4]

This allegation is conclusory. The issue was discussed extensively on pp. 58-63 of Order No. 2012-884 and at pp. 6-9 of the present Order.

9. The Commission erred in finding and concluding that the additional costs sought for Cyber Security, Change Order 12 and Change Order 15 in this docket are reasonable and prudent and comport with the terms of the BLRA. The additional costs sought for Cyber Security, Change Order 12 and Change Order 15 could and should have been anticipated or avoided at the time of the Company's initial BLRA Application. [5]

This allegation is conclusory. The issue was discussed extensively on pp. 63-68 of Order No. 2012-884. See also pp. 6-9 of the present Order.

10. The Commission erred in failing to conclude that the BLRA requires consideration of the prudence of continuing to incur capital costs for a nuclear project where the evidence of material changed conditions compels the conclusion that incurring additional capital costs for constructing the project is now imprudent and where such costs can be avoided by abandoning the nuclear project in favor of a less costly alternative energy resource plan.

This allegation is conclusory and merely expresses a contrary viewpoint to the Commission's, which was based on the evidence before it. The Commission discussed the issue extensively on pp. 13-15 and on pp. 32-33 of Order No. 2012-884.

10. The Commission erred in failing to conclude that the evidence in the record of material changed conditions regarding the costs of this project and feasible alternatives compels a finding that continuing to incur capital costs for the nuclear project is now imprudent where such costs can be avoided by abandoning the nuclear project in favor of a less costly alternative energy resource plan.[6]

This allegation is conclusory and merely expresses a contrary viewpoint to the Commission's, which was based on the evidence before it. The Commission discussed the issue extensively on pp. 13-15 and 32-33 of Order No. 2012-884.

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[4] See also SCEUC Petition, p. 10, Paragraph 4 c. Although the SCEUC allegation is not conclusory, it is erroneous, as per the discussion herein.

[5] See also SCEUC Petition, p. 10, Paragraph 4 d. Although the SCEUC allegation is not conclusory, it is erroneous, as per the discussion herein.

[6] The Petition for Rehearing or Reconsideration filed by the Sierra Club had two allegations of error labeled "10." For consistency, we have replicated this numbering scheme here.

11. The Commission erred in interpreting the BLRA to preclude the consideration of "changes in fuel costs" in considering the prudence of abandoning construction of the nuclear project in favor of a less costly alternative energy resource plan.

This allegation is directly contrary to S.C. Code Ann. § 58-33-275(D) (Supp. 2012) and is discussed on page 17 of Order No. 2012-884.

12. The Commission erred in interpreting the BLRA to authorize the "routine" filing of capital cost update proceedings instead of requiring the utility to anticipate and avoid incurring imprudent costs to the detriment of ratepayers.

S.C. Code Ann. § 58-33-270(E) (Supp. 2012) states that "As circumstances warrant, the utility may petition the commission....for an order modifying any of the schedules, estimates....that form part of any base load review order issued under this section. ..(emphasis added)." Therefore, the statute allows a company to file at any time that circumstances may warrant it, and the statute goes on to state that the Commission shall grant the relief as requested, as long as the utility can show that the changes "are not the result of imprudence on the part of the utility...." The utility is consistently under a duty to show that expenditures on a facility are prudent. The Commission found that the evidence presented by SCE&G in this case "amply establishes the prudency of continued investment in the project under construction." See Order No. 2012-884 at 32 for further discussion.

13. The Commission erred in interpreting the BLRA to preclude protecting ratepayers from imprudent capital costs of continued plant construction while authorizing the utility to recover even the costs of an abandoned nuclear plant project.

The Petitioner joins two concepts in this allegation that are not logically connected. However, we will attempt to discuss. First, the BLRA does not preclude protection of the ratepayers if a utility imprudently incurs costs. If this occurs, the Commission does not have to grant the relief requested on a petition for a change in estimates or schedules. See S.C. Code Ann. § 58-33-270(E) (Supp. 2012). See also S.C. Code Ann. § 58-33-275(E) (Supp. 2012) which states that the Commission may disallow additional costs incurred as a result of a material or adverse deviation from a schedule or estimate, if the evidence shows that the failure to minimize the expense was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize the expense. S.C. Code Ann. § 58-33-280(K) (Supp. 2012) governs the costs of abandoned plants. When a plant is abandoned after a base load order has been issued approving recovery, the capital costs and AFUDC (Allowance for Funds Used During Construction) related to the plant shall nonetheless be recoverable, provided that the utility can prove by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. Therefore, under the BLRA, prudent costs are recoverable, even with a plant abandonment, while imprudent costs are not. The BLRA

guards ratepayers from an attempt by utilities to recover imprudent costs. The Commission has always been governed by this principle in BLRA cases, and continued to be so governed in this case. See discussion in Order No. 2012-884 at 68.

14. The Commission erred in concluding that the construction of the nuclear Units should continue and that the additional capital costs and schedule changes are not the result of imprudence on the part of SCE&G.

This allegation is simply the opposite of the conclusion that the Commission ultimately reached, after weighing all the evidence in the case. The Petitioner does not furnish any evidence or reasoning for this allegation of error. The Commission's reasoning is explained thoroughly in Order No. 2012-884, especially at page 32 and page 69.

15. The Commission erred in rejecting the evidence presented by the Sierra Club that the nuclear project was no longer prudent in light of available alternatives and finding that the evidence presented by SCE&G amply establishes the prudency of continued investment in the nuclear project.

This allegation simply presents a repetitive conclusory statement, with no supporting evidence stated. Again, the Commission explained thoroughly why it rejected the evidence presented by the Sierra Club in Order No. 2012-884, especially at page 14 and page 32.

16. The commission[7] erred in finding that the evidence presented in this docket demonstrates that additional nuclear generation will bring considerable benefits of fuel diversity and the flexibility to respond to future environmental regulations to SCE&G's generation portfolio across a broad range of possible scenarios for fuel costs and environmental regulations.

Again, the allegation is conclusory, and without supporting evidence. Further, it ignores this Commission's full explanation for its finding in this area, found in Order No. 2012-884 at 26 and 33.

17. The commission erred in finding that the Company made an affirmative and sufficient demonstration of the prudency of its nuclear construction program.

As stated in Order No. 2012-884, the Sierra Club appears to argue that, as a condition of approval of the updated capital cost schedules at issue, the issue of whether nuclear generating resources remain the appropriate choice for SCE&G should be reopened.

[7] The Petition for Rehearing or Reconsideration filed by the Sierra Club made reference to both the "commission" and the "Commission" in its allegations of error. For consistency, we have replicated this style here.

Order at 15. S.C. Code Ann. § 58-33-275(B) (Supp. 2012) states that the original determination (here made in Order No. 2009-104(A)) may not be challenged or reopened in any subsequent proceeding. SCE&G takes the position, and correctly so, that the issue before the Commission in this proceeding was changes to costs and schedules under S.C. Code Ann. § 58-33-270(E) (Supp. 2012). However, even so, this Commission examined the evidence in the present case and affirmed its prior position taken in Order No. 2009-104(A), that the Company made an affirmative and sufficient demonstration of the prudency of its nuclear construction program, as well as the prudency of the changes to costs and schedules proposed by the Company. See Order No. 2012-884 at 18.

18. The Commission erred in concluding that the evidence in the record demonstrates that $278.05 million in newly identified and itemized costs are the result of the normal evolution and refinement of construction plans and budgets for the Units and are not the result of imprudence on the part of SCE&G.

In effect, the entirety of Order No. 2012-884 addresses this allegation, wherein the Commission weighed the evidence before it, and reached the conclusion summarized in Order No. 2012-884, beginning at 68. Again, this is a conclusory allegation, with no evidence cited to support it.

18. The Commission erred in concluding that these additional costs are reasonable, necessary and prudent costs that SCE&G is incurring as owner of the project to ensure that the project is constructed prudently, efficiently and economically, and to ensure that the Units can be operated and maintained safely and efficiently when they are completed.[8]

Again, the entirety of Order No. 2012-884 addresses this allegation, leading up to the conclusion beginning at 68. No evidence is cited to support this conclusory allegation.

19. The Commission erred in concluding that the evidence in the record shows that the delay in the substantial completion of Unit 2 and the acceleration of the completion of Unit 3 supports updating the construction milestones for the Units and is not the result of any imprudence on the part of SCE&G.

This conclusory allegation is discussed specifically in Order No. 2012-884 at 73, paragraphs 7 and 8. Clearly, the delay in the substantial completion of Unit 2 was principally caused by a delay in the Nuclear Regulatory Commission's issuance of the Combined Operating License ("COL") for the V.C. Summer Units. Further discussion is found on page 68 of that Order. The evidence showed that, once construction of Unit 2 was delayed, the construction milestones could be modified and construction could be accelerated for Unit 3. Order at 69.

[8] The Petition for Rehearing or Reconsideration filed by the Sierra Club had two allegations of error labeled "18." For consistency, we have replicated this numbering scheme here.

20. The Commission erred, based on the evidence presented by Sierra Club and its expert, Dr. Mark Cooper, in failing to require SCE&G to undertake a thorough evaluation of the prudence of abandoning the nuclear project in favor of a less costly alternative energy resource plan.

A thorough analysis and evaluation of this conclusory allegation is found in Order No. 2012-884 at 18-33. This is one of the major issues in the case, and extensive evidence is cited to support the Commission's conclusion in that Order.

21. The Commission erred in its Order approving the Petition by SCE&G where said Order is arbitrary, capricious, an abuse of discretion, clearly erroneous, unsupported by substantial evidence, in violation of constitutional or statutory provisions, made upon unlawful procedure or affected by other error of law.

This conclusory allegation fails to state with specificity what the Commission has allegedly done to violate the specific points listed, which are actually found in the Administrative Procedures Act at S.C. Code Ann. § 1-23-380 (5) (Supp. 2012). In point of fact, even if the Sierra Club had stated its allegations with more specificity, the points listed are only applicable to judicial review upon exhaustion of administrative remedies (See S.C. Code Ann. § 1-23-380 (Supp. 2012)) and are not specifically applicable for petitions for rehearing before the Commission, such as those presently under review herein. (See S.C. Code Ann. § 58-27-2150 (1976)). There is no reference to these points in Order No. 2012-884.